IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 231 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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THAKORBHAI A GAJJAR

Versus

DIVISIONAL CONTROLLER

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Appearance:

1. Special Civil Application No. 231 of 1991

MR MUKESH H RATHOD for Petitioner No. 1

MR PRANAV G DESAI for Respondent No. 1

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CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA

Date of decision: 15/07/2004

ORAL JUDGEMENT

#. For not obeying the order of his superior officer to do the alignment work, the petitioner-workman was punished by the respondent-Corporation by reverting him

on the minimum pay scale of Rs.295/- from Rs.981/-. The same was challenged by the petitioner-workman before the Industrial Tribunal. The learned Tribunal partly accepted the reference by modifying the punishment of reverting the petitioner to the minimum pay scale of Rs.295/- by imposing penalty of stoppage of 5 increments with future effect by its judgment and award dated 9.3.1999. This is challenged in this petition by the petitioner-workman under Art.227 of the Constitution of India.

#. Learned counsel Mr.Rathod for the petitioner vehemently submitted that the misconduct committed by the workman was not of such a serious nature, which calls for the punishment of stoppage of 5 increments with future effect. He submitted that when the learned Tribunal itself found in para 7 of its award that there was no intention on the part of the workman deliberately not to obey the order of his higher officer, then punishment of stoppage of 5 increments with future effect was not called for. He submitted that though the Tribunal interfered with the original order of penalty imposed by the respondent-Corporation by placing the petitioner workman at his original pay scale of Rs.295/-, the learned Tribunal ought not to have imposed the penalty of stoppage of 5 increments with future effect. He submitted that the penalty of stoppage of 5 increments without future effect was sufficient. He, therefore, submitted that the learned Tribunal failed to exercise its jurisdiction, therefore, this court may interfere and modify the punishment to the stoppage of 5 increments without future effect.

#. However, Mr.Desai submitted that this court has limited scope under Art.227 of the Constitution of India. He submitted that when the Trial Judge exercised its just discretion in favour of the workman, then this court may not interfere with such orders in this petition filed under Article 227 of the Constitution of India when the learned Tribunal has not committed jurisdictional error.

#. I am conscious about the fact that this court is exercising its jurisdiction under Art.227 of the Constitution of India. Under Art.227 of the Constitution of India, this court has limited scope, as held by the Hon'ble Supreme Court in its number of judgments. However, having heard learned counsel for the parties and having regard to the peculiar facts and circumstances of the case, I am of the considered opinion that in the instant case, the Tribunal has committed the jurisdictional error in not properly exercising its

discretion in favour of the respondent-workman. Therefore, this court has to intervene.

#. As stated earlier, on the peculiar facts of this case, misconduct committed by the workman cannot be said to be of such serious nature that he can be either dismissed from service or punished with major penalty like stoppage of five increments with future effect. In the instant case, the petitioner had put on long 20 years of service and this was the first misconduct committed by him that too under some wrong belief that he was not supposed to do the work, therefore, he refused to carry out the orders of his superior. For such misconduct neither a workman can be dismissed from the service nor punished with major penalty like stoppage of five increments with future effect. By imposing major punishment of dismissal from service, the respondent Corporation committed grave error, therefore, it was rightly interfered by the tribunal, but while substituting the penalty the learned tribunal committed grave error in exercising its discretion by imposing major penalty of stoppage of five increments with future effect. Thus, therefore, this court has to interfere with the penalty of stoppage of 5 increments imposed by the Tribunal in its limited jurisdiction under Art.227 of the Constitution of India. On peculiar facts of the case stated hereinabove, by no stretch of imagination, it can be said that it was a case for major penalty of stoppage of 5 increments with future effect. Having regard to the peculiar facts and circumstances of the case, in my considered opinion, the penalty of stoppage of 5 increments without future effect was just and proper instead of that the Tribunal has awarded penalty of stoppage of 5 increments with future effect. Thus, there was a total failure on the part of the Tribunal while substituting the punishment while passing the impugned judgment and award, therefore, this court has no option but to exercise its discretion under Art.227 of the Constitution of India.

#. Accordingly, this petition is allowed and the impugned judgment and award dated 9.3.90 passed by the learned Tribunal imposing penalty of stoppage of 5 increments with future effect is hereby quashed and set aside, instead of that penalty of stoppage of 5 increments without future effect is imposed. The petitioner would also be entitled for all other consequential benefits which may be given to the petitioner within a period of 3 months from the date of receipt of this order. Rule is made absolute to the aforesaid extent with costs.

(B.J.Shethna, J.)

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